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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,497	05/04/2007	Christian Lefevre	007067.00002	4599
22907	7590	06/02/2009	EXAMINER	
BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			WIESE, NOAH S	
			ART UNIT	PAPER NUMBER
			1793	
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			06/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/584,497	LEFEVRE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NOAH S. WIESE	1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 May 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-4 and 6 is/are allowed.  
 6) Claim(s) 5,7-10 and 15 is/are rejected.  
 7) Claim(s) 9-17 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 04 May 2007 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Status of Application***

1. The claims 1-17 are pending and presented for the examination.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in the application.

### ***Information Disclosure Statement (IDS)***

3. The information disclosure statements (IDS) were submitted on 06/22/2006 and 01/14/2008. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner. Please refer to applicant's copy of the 1449 herewith.

### ***Claim Objections***

4. Claims 9-17 are objected to because of the following informalities: Claim 11 lists five numbers in parentheses after "a tube or a blank". While these numbers are likely in reference to items in the drawings, this fact is not specified in the claim, and the placement of five numbers in one set of parentheses makes the claim confusing as to what the numbers refer. Claims 12-17 are objected to because they depend from claim 11. Appropriate correction is required.

Claim 9 is objected to because the compound "Srs" should be written "SrS".

Claim 10 is objected to as dependent on claim 9.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 5, 8-10, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 5, 10, and 15 state that the batch contains no sulfur but the claims from which they depend require the inclusion of sulfur-containing compounds. The batches would therefore necessarily include sulfur, even if this sulfur was not in elemental form, and thus claims 5, 10, and 15 are inoperable as written and are indefinite.

Claims 8-9 are rejected under 35 U.S.C. 112, second paragraph because the claims recite a range for the MoS<sub>2</sub>/SrS ratio but do not specify if this is a weight or molar ration. This renders the scope of the claims indefinite.

***Claim Rejections – 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Oyama et al (EP 1193226).

Regarding **claim 7**, the claim is drawn to an amber glass produced by a certain method. The limitation that the glass is obtained by melting a batch as claimed in claim 1 is a product-by-process limitation. Because amber glasses having equivalent composition and structure to those of claim 7 can be produced by melting batches other than that of claim 1 (such as batches wherein the Sr and Mo components are provided by oxides rather than sulfides), the product-by-process limitation is not given patentable weight in determining the distinctness of the claim. Since the limitation cannot be given patentable weight, an amber glass having a soda-lime-silica composition would meet the claim 7 limitations. Oyama teaches a yellow to orange (amber) glass based on the soda-lime-silica system (see Abstract). As discussed above, this teaching anticipates the limitations of claim 7.

Regarding **claims 8-9**, Oyama teaches glass compositions that meet all of the compositional limitation of the claims (see Table 1, examples 1 and 2). The sulfur component is given by Oyama as S rather than as SO<sub>3</sub> as in instant claims. However, this sulfur would actually be present in the glass in the oxidized form SO<sub>3</sub>, so the difference is in notation rather than composition. Evidence of this fact is the teaching that the sulfur is added as an alkaline sulfide such as Na<sub>2</sub>S or K<sub>2</sub>S (see paragraph 0020). This is same manner as the sulfur is added in the instant invention (as a sulfide compound) so it necessarily follows that the sulfide compound would oxidize to SO<sub>3</sub> when the glass was melted, as occurs in the instant invention.

Regarding the limitations that the MoO<sub>3</sub> and SO<sub>3</sub> are obtained from molybdenum disulfide and strontium sulfide, these are product-by-process limitations. Because the

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teachings of Oyama show that glasses with equivalent compositions and equivalent amorphous structures can be obtained by using different starting materials for MoO<sub>3</sub> and SO<sub>3</sub>, these product-by-process limitations are not given patentable weight in determining the distinctness of the claims. Thus, Oyama teaches a glass that anticipates the limitations of claims 8-9 even though its precursor material may be different.

Regarding **claim 10**, as discussed above, the limitation that the glass does not contain sulfur does not make sense given that the claim depends from a claim that requires a sulfur-containing compound. Sulfur is necessarily contained in the glass as part of the compound SO<sub>3</sub>. As this is the only further limitation to claim 9, claim 10 is rejected under the same grounds and same rationale as given for claim 9 above.

#### ***Allowable Subject Matter***

9. Claims 1-4 and 6 are allowed. The prior art does not teach or render obvious a glass batch based on the soda-lime-silica system that comprises 0.01-1 wt% molybdenum disulfide and 0.01-7 wt% strontium sulfide.

#### ***Conclusion***

10. Claims 5, 7-10, and 15 are rejected. Claims 9-17 are objected to. Claims 1-4 and 6 are allowed.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah S. Wiese whose telephone number is 571-270-3596. The examiner can normally be reached on Monday-Friday, 7:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Noah Wiese  
27 May, 2009  
AU 1793

/Karl E Group/  
Primary Examiner, Art Unit 1793